REMARKS/ARGUMENTS

Applicant acknowledges receipt of the Office Action dated June 26, 2009.

The Examiner has stated that the application includes five patentably distinct species of invention:

> Group I, claims 1-16, drawn to an in vitro method that comprises: a) the detection and/or quantification of the FGFR3 protein, of the mRNA of the FGFR3 gene, or of the corresponding cDNA in a sample of an individual, and b) the comparison of the amount of FGFR3 protein, of the mRNA of the FGFR3 gene or of the corresponding cDNA detected in a sample of an individual, with their normal reference values;
>
> Group II, claims 17 and 19, drawn to a use of nucleotide or peptide sequences derived from the FGFR3 gene, to detect in vitro the presence ofa bladder transitional cell carcinoma, to determine in vitro the stage or severity of this cancer in the individual, or to monitor in vitro the effect of the therapy administered to an individual with this cancer; or a use of a nucleotide or peptide sequence derived from the FGFR3 gene, in methods to screen for, identify, develop and evaluate the efficiency of compounds to bladder transitional cell carcinoma;
>
> Group III, claim 18, drawn to an in vitro method to identify and evaluate the efficacy of therapeutic compounds against cancer bladder transitional cell carcinoma that comprises: a) placing in contact a culture of bladder tumour cells (with uncontrolled proliferation) with the candidate compound, in the appropriate conditions and for a suitable time for these to interact, b) detect and/or quantifying expression levels of the FGFR3 gene or the FGFR3 protein, and c) compare said expression levels with those of the control cultures of tumour cells not treated with the candidate compound;
>
> Group IV, claims 20-22 and 24-29, drawn to an agent that inhibits the expression and/or activity of the FGFR3 protein; and
>
> Group V, claim 23, drawn to a use of any of the agents according to claims 20 or 21 in the manufacturing of a medicinal product for the treatment of bladder transitional cell carcinoma.

The inventor has required the Applicants to elect one of groups I-V for further prosecution. Accordingly, the applicants, through their representatives, elect Group I. Also, the Examiner requires election of one species set forth in claim 21 of group IV. the applicants, through their representatives, elect group (a) of claim 21, drawn to an antibody, or combination of antibodies. These elections are made with traverse.

The Examiner argues that, although there is a single general concept expressed in Claim 1
linking the claims, this is not a special technical feature as Claim 1 is anticipated by Cappellen et al.,

submitted in the IDS. Specifically, the Examiner argues:

> The expression "special technical features" shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art. Cappellen et al. (Nature Genetics, Vol. 23, pp.18-20, 1999 - cited on IDS) ... anticipates claim 1, ... and thus, the shared technical feature of the groups is not a "special technical feature", unity of invention between the groups does not exist.

First of all, by identifying the existence of a shared technical feature and arguing that it is not a "special technical feature" on the sole grounds that it is allegedly anticipated, we respectfully submit that the Examiner has, in fact, admitted that a shared technical feature exists.

First, the assertion that a shared technical feature does not define a contribution over the prior art before the claims are fully examined is premature.

We would further direct the Examiner's attention to MPEP section 810, which states:

> In general, in an application when only a nonfinal written requirement to restrict is made, *no action on the merits is given.* A 1-month (not less than 30 days) shortened statutory period will be set for reply *when a written restriction requirement is made without an action on the merits...* In those applications wherein a requirement for restriction or election is made via telephone and applicant makes an oral election of a single invention, the written record of the restriction requirement will be accompanied by a complete action on the merits of the elected claims (Emphasis added).

By alleging that some claims are anticipated by Cappellen (i.e., by alleging that some claims are unpatentable under 35 U.S.C. 102), the Examiner has prematurely made at least a partial action on the merits, and provided the Applicant with only one month for response. Additionally, making a restriction requirement prior to a full action on the merits, while simultaneously asserting that claims in one group are not patentable, can have the effect of improperly pressuring an Applicant to select another group for examination.

Accordingly, since the Examiner has admitted the existence of a shared technical feature shared by all groups as required by PCT Rule 13.2, and since the Examiner prematurely made at least a partial action on the merits for the sole reason of justifying a restriction requirement, it is respectfully submitted that the restriction requirement is improper. Accordingly, withdrawal of the restriction requirement is requested.

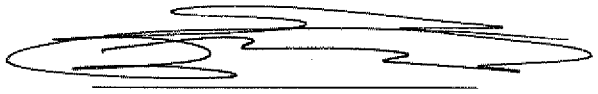
While we believe that the instant amendment places the application in condition for allowance, should the Examiner have any further comments or

suggestions, it is respectfully requested that the Examiner telephone the undersigned attorney in order to expeditiously resolve any outstanding issues.

In the event that the fees submitted prove to be insufficient in connection with the filing of this paper, please charge our Deposit Account Number 50-0578 and please credit any excess fees to such Deposit Account.

Respectfully submitted,
KRAMER & AMADO, P.C.

Date: July 27, 2009



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